



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HUNT,
ATTORNEY GENERAL**

August 6, 1976

The Honorable Ben Ramsey
Chairman
Railroad Commission of Texas
P. O. Box 12967
Austin, Texas 78711

Opinion No. H-858

Re: Whether the Railroad
Commission may issue
declaratory rulings without
hearing and notice under
the Administrative Pro-
cedure and Texas Register
Act.

Dear Mr. Ramsey:

You have requested our opinion regarding the authority of the Railroad Commission to issue formal declaratory rulings without notice and hearing under the Administrative Procedure and Texas Register Act, article 6252-13a, V.T.C.S. The statute, which was effective on January 1, 1976, requires all administrative agencies to follow a detailed notice and hearing procedure "prior to the adoption of any rule." Sec. 5. A "rule" is defined as:

[A]ny agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. Sec. 3(7).

You state that the Railroad Commission has been asked to issue a formal written ruling regarding the following tariff provision, previously adopted by formal order of the Commission:

When the shortest highway route between points, as herein above provided, is not traversable or practical to use, then the highway mileage shall be computed on the basis of the mileage from origin to destination over the routes used, computed from map attached to the mileage guide referred to herein. When rates are assessed under the provision of this note, freight bill or invoice rendered shall contain a statement explaining why the short route cannot be used. Railroad Commission of Texas Motor Freight Commodity Tariff No. 7-M, Item 25, Note 1-(a). (Emphasis added).

The request inquires whether or not distance computations should be made utilizing the shortest highway route between points when that route is not available to carriers because certain bridges on that route are subject to weight limits of 21,000 pounds.

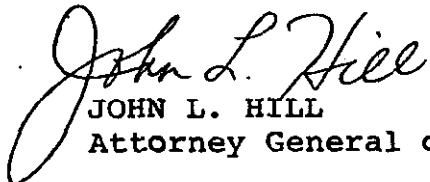
Essentially, the request requires a formal ruling as to whether "not . . . practical to use" includes a situation in which the vehicle is prohibited from using the shortest route by virtue of its weight. We believe that such a ruling would be embraced within the definition of "rule" in section 3(7), since it would apply generally to all vehicles whose weight exceeded the maximum weight limits on any particular "shortest route," and since it would "interpret" a previously adopted Commission order. Thus, in our opinion, the Commission would be required, before issuing such a ruling, to comply with the procedures outlined in section 5 of article 6252-13a.

S U M M A R Y

The Railroad Commission is required to comply with the notice and hearing procedures of article 6252-13a, V.T.C.S.,

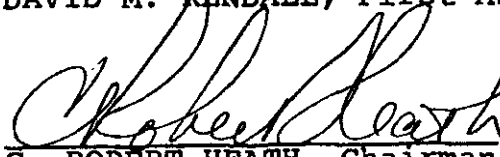
in order to issue a formal declaratory
ruling which requires an interpretation
of a previously adopted Commission rule.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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